IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 224 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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UNITED INDIA INSURANCE CO. LTD. - Appellant(s)
Versus
PUSHPAKUWARBA HARICHANDRA CHAVDA & ORS. - Respondent(s)

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Appearance :
Shri Vibhuti Nanavati for Shri P.V. Nanavati for Appellant(s).
Shri Rajni H. Mehta for Respondent(s) : 1 - 5.
None for Respondent(s) : 6 – 7 though reserved.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/06/2007

ORAL JUDGMENT

Being aggrieved by the judgement and award dated 14th September, 1983 in Motor Accident Claims Petition No.233 of 1981

passed by the learned Member, Motor Accident Claims Tribunal No.1, Kheda at Nadiad, the Insurance Company has filed this appeal.

2. The facts are not in dispute nor the death of three persons and injuries suffered by other five are in dispute. The only dispute raised by the appellant is that if those eight persons were carried for hire or reward or as gratuitous passengers, then, the Insurance Company would not be liable to answer the claim.

3. Shri Nanavati, learned Counsel for the appellant, after taking me through the records, submitted that the learned Tribunal below was not justified in holding that those eight persons had paid some money to the driver of the truck not as the passengers, but, as the owners of the goods which they were carrying in the said truck.

4. Contending contrary to this submission, Shri Mehta, learned Counsel for the respondents-claimants, submits that on those factual aspects, certain concessions were made before the learned Tribunal by the learned Counsel for the Insurance Company and if there was concession on the facts at the appellate stage, the appellant would not be allowed to wriggle out of it.

5. The defence of the Insurance Company has been well considered by the learned Tribunal below and in paragraphs 106 to 118, the learned Tribunal below has recorded as a fact that each of the persons, i.e. three deceased and five injured, were carrying goods in the truck and they were in the truck to take care of and carry the goods with them. Once this position was conceded before the learned Tribunal below by the learned Counsel for the Insurance Company, then, it would not be possible for this Court to re-record the findings.

6. After going through the complete records, I am unable to hold that even on the facts that the learned Tribunal below was wrong or unjustified in recording the findings against the interest of the Insurance Company.

7. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**